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THE JOURNAL
of the
FEDERAL COMMUNICATIONS BAR ASSOCIATION

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EDITORIAL OFFICE

1728 Massachusetts Ave., N. W.

Washington 6, D. C.

JOHN W. WILLIS, EDITOR

The Federal Communications Bar Association

Organized—1936 Incorporated—1943

"To promote the proper administration of the federal laws relating to wire and radio communications, and of related acts; to uphold the honor and dignity of practice before the Federal Communications Commission and to increase the usefulness of the practitioners in promoting the due administration of justice; for the mutual improvement and social intercourse of the members of the Association; and to establish, own and maintain a library for their use and reference."

Officers for 1948

CARL I. WHEAT, *President*

GUILFORD S. JAMESON, *First Vice-President*

NEVILLE MILLER, *Second Vice-President*

CHARLES E. THOMPSON, *Secretary*

VINCENT B. WELCH, *Treasurer*

Executive Committee

Officers ex officio and

Eliot C. Lovett (one year)

Ralph A. Van Orsdel (one year)

John F. Gibbons (two years)

Arthur W. Scharfeld (two years)

Fred W. Albertson (three years)

George S. Smith (three years)

THE PRESIDENT'S LETTER

To the Members of the
Federal Communications Bar Association:

In this bulletin you will find listed the newly elected officers of the Association and the personnel of committees appointed to date. The business transacted at the Annual Meeting is also briefly reviewed and the reports of the outgoing President and Treasurer and of the Committee on Practice and Procedure are reprinted. This bulletin should not be compared to the FEDERAL COMMUNICATIONS BAR JOURNAL as it appeared in past years. It is intended merely as an informal preliminary report whose purpose is to bring the members up to date on the work and status of the Association, pending resumption of publication of the JOURNAL on a regular basis.

There were many factors which rendered it difficult to continue the publication of the JOURNAL through the past few years, but now that at least some of those factors no longer exist, it is the sincere hope of the Executive Committee that, under the chairmanship of Arthur W. Scharfeld, the Committee on Publications will find itself able to develop the necessary material for a revival of the quarterly JOURNAL. They will welcome suggestions from any member, and they are especially desirous of obtaining articles or other contributions which will be worthy of publication in such a periodical.

Aside from the JOURNAL, the efforts of the Committees on Legislation and on Practice and Procedure seem particularly important. There will doubtless be much suggested legislation for consideration during the current year, and the excellent work of the Practice and Procedure Committee during last year should obviously be continued. In this field the Association performs an important function, for it is only through the Association, and especially through its Committee on Practice and Procedure, that the Commission and the Bar may meet informally, wholly apart from the issues and exigencies of advocacy or of pending proceedings, to consider those problems of machinery and of process which are constantly arising in connection with the operations of such an administrative tribunal.

It is hoped that much can be accomplished in this direction, and the JOURNAL will carry current reports of progress on this and on other phases of the Association's activities. It is planned, if possible, to hold a dinner meeting in Washington, D. C., late in the Spring, and, of course, the traditional Annual Barbecue will—we trust— again be held. (Some way must apparently be found more adequately to finance this popular shindig!) Finally, it will be the endeavor of your officers to resume the holding of the Annual Meeting and banquet in the month of December.

I am particularly anxious to have all the help and cooperation I can obtain from the membership, in order that this Association may continue

to be of value to those lawyers whose practice brings them into the field of communication law. To that end, I will welcome your suggestions, and I know I speak for all members of the Executive Committee when I say that, working together, we shall endeavor to make this a most successful and worthwhile year for this organization.

CARL I. WHEAT.

Committees of the Association for 1948

Standing Committees

Committee on Membership

One Year—Frank U. Fletcher
Two Years—Clair L. Stout
Three Years—Kelley E. Griffith
(Selects own chairman)

Committee on Nominations

One Year—Herbert N. Bingham, Eliot C. Lovett
Two Years—Philip G. Loucks, Frank W. Wozencraft (Ch.)
Three Years—Duke M. Patrick, Paul A. Porter

Committee on Professional Ethics and Grievances

One Year—Robert D. Swezey, Norman S. Case
Two Years—Ralph A. Van Orsdel (Ch.), William B. Porter
Three Years—Norman M. Littell, D. F. Prince

Committee on Practice and Procedure

One Year—Philip Bergson, David G. Tolman
Two Years—Leonard H. Marks (Ch.), J. T. Quisenberry
Three Years—Jeremiah Courtney, Clyde E. Bailey

Special Committees

Committee on Legislation

Eliot C. Lovett (Ch.), Ben S. Fisher, James Kennedy, Frank Quigley, Horace L. Lohnes, Frank Roberson

Committee on Publications

Arthur W. Scharfeld (Ch.), Neville Miller, Russell Rowell

Committee on Activities

Harold E. Mott (Ch.), A. Dale Cobb, Harold G. Cowgill, Everett D. Johnston, Corwin R. Lockwood, Thomas G. Wilson

Announcement by the Committee on Publications

With this special bulletin the FEDERAL COMMUNICATIONS BAR JOURNAL recommences publication. The present issue is intended merely to bring the membership up to date on the proceedings of the last Annual Meeting and on the officers and committees of the Association. Within a short time it is hoped to have the JOURNAL back on a regular quarterly basis, in a new format.

As heretofore, the JOURNAL will aim at keeping the membership informed as to Commission and Association activities, as well as to important developments in the courts and Congress. Articles by lawyers active in radio practice of course will continue to appear; in addition it is hoped from time to time to include articles by persons whose interest in radio stems from different sources, in order that the bar may have the advantage of obtaining different perspectives on important questions.

The Committee has secured the services of John W. Willis, of Pike and Fischer, as active editor of the JOURNAL. Any comments or suggestions from members of the Association as to content or format of the JOURNAL will be appreciated.

ARTHUR SCHARFELD, *Chairman*
NEVILLE MILLER
RUSSELL ROWELL

The Committee on Publications, under the chairmanship of Arthur Scharfeld, announces the holding of a seminar on the new Pike and Fischer Radio Regulation service, Tuesday, March 23, at 2 p. m. in Hearing Room 6121, Post Office Building. The purpose of the seminar is to acquaint the membership, as well as the staff of the Federal Communications Commission, with the make-up of the service, to answer any questions which may have arisen and to receive suggestions for improvements. All lawyers, whether or not members of the Association, will be welcome.

Proceedings of the Eleventh Annual Meeting

The Eleventh Annual Business Meeting of the Association was held at the Mayflower Hotel on January 28, 1948, and was as well attended as usual. Reports of officers and committees were read, and Reed T. Rollo, the outgoing President, presented an extensive report on the Association's activities during 1947. Mr. Rollo's report is reprinted below.

The Secretary reported a total of 377 members of the Association, the changes since the last Annual Meeting having been twenty-six new members admitted, twenty-four members resigned and seven members lost by death, these having been George B. Porter, D. B. Hanely, J. H. Coon, Patrick J. Loughran, Howard L. Kern, Charles A. Hyde and Ralph H. Kimball. The Secretary also reported that during the year there had been eight meetings of the Executive Committee.

The Committee on Membership reported its extensive labors in connection with the entire membership problem, and pointed out that with a resumption of publication of the BAR JOURNAL all persons not now members of the Association but who have been admitted to practice before the F.C.C. should again be invited to join and to participate in the Association's activities.

The Committee on Legislation reported the receipt of a request from the Federal Communications Commission for an expression of the Association's views on the question of editorializing by broadcast licensees. The Committee referred the question to the incoming administration. Horace L. Lohnes, presenting the report of the Committee in the absence of the chairman, Frank Roberson, recommended as his personal view that the Association should take a position with regard to this matter. Subsequently, under "new business," it was moved by Louis Caldwell and unanimously agreed that the Association take no position on the question because of the controversial nature of the subject and the differences of opinion thereon by the members of the Association.

The report of the Committee on Radio Regulation Services was submitted by the chairman, Neville Miller, who outlined the progress made by that committee in obtaining the publication of the Pike and Fischer Radio Regulation service. Mr. Miller suggested that a standing committee on publications be appointed to maintain liaison with Pike and Fischer in the maintenance and improvement of the service.

After the conclusion of the Annual Meeting and the election of officers for the year 1948, the custom of the Annual Dinner was resumed, with Paul Porter as Toastmaster and Commissioner Robert Jones as chief speaker of the evening. The attending members and guests filled the Main Ballroom of the Mayflower Hotel, and after Commissioner Jones' interesting and witty address an extended musical program was presented.

Report of Reed T. Rollo, Outgoing President

Today's meeting of the members of the Federal Communications Bar Association is the 11th annual meeting of the association and the 5th annual meeting since the association was incorporated in 1943.

I shall endeavor, in this report, to summarize briefly the various activities in which your association has engaged during the past year.

PIKE AND FISCHER RADIO REGULATION SERVICE

The most valuable accomplishment of the association has been, in my opinion, the Pike and Fischer Radio Regulation Service, the first three volumes of which were delivered to subscribers last week. At the last annual meeting the executive committee was instructed to study and take action on a plan to make provision for the obtaining, publishing and distributing of the Rules and Regulations of the Commission with appropriate supplements as amendments are made to such rules. Pursuant to this authorization your president appointed a special committee, consisting of Neville Miller, Chairman, and Arthur Scharfeld and Russell Rowell, to study the matter and to recommend a plan of action to the executive committee. The end result of the untiring work of this committee is the Pike and Fischer service, which was sponsored by your association. I shall call on Mr. Miller later to report on the work of his committee, but I want to take this opportunity of thanking the committee for its diligent work and generous devotion of time and effort to the accomplishment of its assigned task. I also think a word of appreciation is due to those members who have made the service possible by their subscriptions and their guaranties, to the NAB for its efforts in publicizing the Service, and to Pike and Fischer for the excellent service they have produced. At long last we have available in one reliable and accurate source the statutes and treaties pertinent to our practice, the Commission Rules and Regulations, the Standards of Good Engineering Practice, all annotated with editorial notes and official citations; also the full text of all FCC decisions not yet reported in FCC reports (i.e., since June 30, 1945) and digests of all those decisions. All of this material is key-noted and will be kept current with weekly supplements. In addition, a comprehensive digest of all FCC and FRC decisions prior to July 1, 1945, and of all pertinent court decisions prior to January 1, 1948, is now in course of preparation and will be sent to subscribers in June of this year.

BAR JOURNAL

It is not without embarrassment that I now turn to the subject of the Bar Journal. We have not published a single issue during the entire year. In fact, the last issue published by your association was in December 1945. Our failure to publish during 1947 has not been because of

lack of effort. The subject was discussed at length at the first meeting of the executive committee held after I took office last February, and I was authorized to appoint an editor and four associate editors, each to be responsible for one issue. The editor I selected believed that a more efficient organization could be set up if he were at liberty to select whatever assistants he desired and if he retained responsibility for all of the issues. At the next meeting of the executive committee I explained the matter and the executive committee approved the change in plans. We then held a meeting attended by representatives of several of the law offices and the editor, at which plans were fully discussed, material assigned, and a deadline set. Some of the material was submitted, but no journal was published. In fairness to the editor, I should say that because of the stress of other work and the failure of others to contribute journal material, he was unable to get the journal published. One last effort to publish one issue before today's meeting was made last November. Another person was asked to serve as editor, and although he made a strenuous effort, it proved impossible.

In view of the experience just reviewed, I recommend that your new officers and executive committee consider the advisability of employing a competent individual on a part-time basis as editor of the Journal. Perhaps such an individual could be found on the staff of Pike and Fischer working on the Radio Regulation Service. My recommendation would also include a Journal Committee, to be appointed from the executive committee, to supervise and review the work of the paid editor.

JUDICIAL CIRCUIT CONFERENCE

The Judicial Circuit Conference for the District of Columbia was held on June 6, 1947. Your association was actively represented in making arrangements for this Conference and in the Conference itself. Two members of your executive committee, Carl Wheat and Arthur Scharfeld, participated in the arrangements and Arthur Scharfeld spoke as a discussion leader on the topic "Disbarment of Lawyer-Practitioners before Administrative Agencies Should Be By Court Action." In addition, at the request of the court, I appointed five delegates from Bar Associations of the various administrative agencies to attend the Conference. With respect to the topic discussed by Arthur Scharfeld the Conference decided that the subject should be called to the attention of the several Bar Associations represented at the Conference and also to the Chairman of the Section on Administrative Law of the American Bar Association, with a recommendation that the preparation of legislation be considered by them so that the subject matter may be more specific for further consideration.

COMMITTEES

Your committee on practice and procedure, under the Chairmanship of Leonard Marks, has been exceptionally active throughout the year and has devoted a great deal of time and effort in endeavoring to improve the practice and procedure regulations of the Commission. Leonard will report the activities of his committee to you.

Your legislative and membership committees have also been active during the year. Their respective chairmen, Frank Roberson and Clair Stout, will report on their activities.

A special committee was appointed to consider the new forms of the FCC, consisting of Robert Booth, Chairman; John Southmayd, James Neu and Francis X. McDonough. As a result of the work and report of this committee, Guilford Jameson, as acting president in my absence, submitted a comprehensive report to the Commission.

At the request of Austin Canfield, President of the Bar Association of the District of Columbia, I appointed Harold Mott as a delegate from our Association to participate in a study of the problem of juvenile delinquency. Harold attended the conference and submitted a comprehensive report to your executive committee.

ANNUAL OUTING

The annual outing of the association was held at the home of Horace Lohnes—Twin Oaks, Virginia—on October 18. Through the hospitality of Horace Lohnes and the work of the committees in charge, headed by Tom Wilson, everyone had a very enjoyable day. This year your executive committee decided that your treasury was not quite able to stand the cost of the entire party and so a charge of $1.00 per member and $2.00 per guest was made. This proved to be a wise change in policy. The attendance was greater than ever before—approximately 500—and the deficit incurred by your association amounted to only $763.79.

EDITORIALIZING BY BROADCAST LICENSEES

As you all know, the FCC originally scheduled a hearing for January 12, 1948, now postponed to March 1, 1948, in the Matter of Editorializing by Broadcast Licensees. Your association has been invited by the FCC to present its views at the hearing. The matter was referred to the Legislative Committee, and that committee has suggested that the question be referred to the new Legislative Committee, to be appointed for the coming year. I might add that at least two members of the committee have suggested that the matter involves substantive law, rather than procedure, and that the association should steer clear of such questions.

ANNUAL DINNER

This year your executive committee decided to resume the practice of having a dinner following this annual meeting. Commissioner Robert Jones has consented to be the speaker and the Committee on Arrangements under the Chairmanship of E. D. Johnston has arranged a party which I am sure we shall all enjoy. Radio Stations WTOP and WRC and Television Stations WTTG and WMAL-TV are supplying the talent for our entertainment. Advance reservations indicate an attendance exceeding 300 and all of the Commissioners and department heads will be present, except Commissioner Webster, who is out of the country.

CONCLUSION

In conclusion, I wish to express my appreciation for the honor of having served as your president during the past year and to thank all of you for the help you have given me. In particular, I wish to thank those of you who have served so diligently on the various committees. My thanks also to Guilford Jameson, who acted as president during June, July and August while I was taking an enforced vacation.

TREASURER'S REPORT
As of January 28, 1948

Bank Balance, February 18, 1947			$ 2,075.87
U. S. Government Bonds, February 18, 1947			2,000.00
Receipts:			
Balance Received on 1947 Annual Meeting		$ 570.50	
Dues		1,875.00	
Interest on Bonds		25.00	
Annual Outing 1947		795.00	
Deposits to January 28, 1948 on 1948 Annual Dinner		1,680.00	
Balance Received on 1946 Annual Meeting		5.00	4,950.50
Total			$ 9,026.37
Disbursements:			
Balance Paid on 1947 Annual Meeting		$ 817.30	
Annual Outing, 1947		1,558.79	
Partial Payment on 1948 Annual Dinner		300.00	
Batt, Bates & Co., Inc., Printing & Mailing		339.52	
Byron S. Adams, Printing		74.75	
Other Printing Firms		84.20	
Messenger Service & Postage		20.93	
Miscellaneous:			
Bank Service Charge	$ 5.70		
Refunds 1946 Annual Meeting	35.00		
Annual Audit Service	25.00		
Binder and Index for Treasurer	11.15		
Steno. Service for Legislative Comm.	10.00		
Mailing Service	10.40		
Refund on 1948 Dinner	6.00	103.25	3,298.74
Balance as of January 28, 1948			$ 5,727.63
Bank Balance January 28, 1948		$ 3,727.63	
U. S. Government Bonds, January 28, 1948		2,000.00	$ 5,727.63

NOTE: Number of Members in Good Standing 361
Members in Arrears 16

Total Members 377

Respectfully submitted,
RUSSELL ROWELL,
Treasurer

Final Report of the Committee on Practice and Procedure

January 28, 1948.

On August 21, 1947 the Committee on Practice and Procedure transmitted to the Executive Committee of the Federal Communications Bar Association the attached interim report on the work which had been done up to that time.

In the interim report six recommendations were made for changes in the existing Rules. In addition the Committee reported on the advisability of adopting the Federal Rules of Civil Procedure relating to discovery. The final point in the interim report dealt with the appearance of the Chairman of the Committee on Practice and Procedure before the Civil Service Commission in a hearing relating to the appointment and qualifications of examiners under the Administrative Procedure Act.

These recommendations were reviewed by the Executive Committee on November 17, 1947 and four of the Rules were approved and the Committee was instructed to prepare appropriate amendments to the Rules and Regulations of the Commission in order to carry out the purpose and intent of the recommendations.

Appropriate amendments have been prepared in accordance with the mandate of the Executive Committee and will be presented for referral to the Commission within the next ten days.

Respectfully submitted
LEONARD H. MARKS
Chairman
Committee on Practice and Procedure

Report of the Committee on Practice and Procedure

August 21, 1947.

The Committee has given careful consideration to the present Rules and Regulations as they relate to practice and procedure in broadcast matters. The following recommendations are submitted for the consideration of the Executive Committee:

(1) *Publication of Notice Regarding Filing of Application*

At the present time the Commission's engineering staff is considerably handicapped in the processing of broadcast applications due to the multiplicity of requests and the complexities involved in the study of proposed directional antennas. After the engineers have studied an application it is frequently necessary to review the report several times until the matter reaches the Commission's attention. This is caused by the filing of co-channel and adjacent channel applications which must be studied in connection with each particular request.

Accordingly, the Committee recommends the adoption of a new rule which would provide as follows:

> Upon the filing of an application for new facilities, change in frequency, hours or power of an AM station, the applicant shall advertise the filing of such application twice a week for three weeks in a daily newspaper of general circulation in the community in which the station is to be located. Thereafter, no action will be taken by the Commission for a period of 90 days from the date of filing during which time any person may propose a competing application either for that or any other town.

If no mutually exclusive application is filed within the 90-day period, the Commission will consider the proposal without regard to any application that may be filed at a later date.

The Committee unanimously recommends this procedure. However, the provision requiring advertisement was approved by a 4-2 vote.

(2) *Commission Review*

After considering an application, the Committee recommends that the Commission do one of the following: (1) grant the application, or (2) if there are objections, advise the applicant by letter of the objections. If the applicant desires, he may amend within 30 days to supply additional information answering these objections.

Upon receipt of the amendment the application is again reviewed and if the Commission is not satisfied, the case shall be designated for hearing.

This recommendation will eliminate considerable delay caused by the present procedure of curing objections by petition to be passed on by the Motions Commissioner. It is believed that the suggested procedure will expedite matters for the Commission and eliminate considerable paper work now required of the Motions Section.

(3) *Motions Practice*

The Committee has studied the present motions procedure and has come to the conclusion that 90% of the motions now being considered are routine. These matters should not require the appearance of counsel for either the petitioner or other parties.

The Committee, therefore, recommends that if no opposition is filed by any party within five days after the receipt of a petition, the Commission may approve the same without placing it on the Motions Calendar. If, however, there is an opposition to the grant of the petition, or if the Commission has objections, then the matter should be listed on the Motions Calendar for appropriate disposition.

(4) *Pre-Hearing Conferences*

The Committee recommends that in advance of hearing, in accordance with the intent of Section 1.814 of the Rules and Regulations, the Examiner should in every case call a pre-hearing conference at which time every effort should be made to clarify the issues, obtain stipulations of fact, and take whatever action may be appropriate to expedite the presen-

tation of testimony. The Committee suggests that this procedure be followed in all cases.

(5) *Exchange of Exhibits Prior to Hearing*

The Committee has given careful consideration to the advisability of requiring that the parties exchange exhibits to be presented in the hearing in advance of the hearing date. The Committee was deadlocked on this proposal with a vote of 3-3.

This proposal is called to the attention of the Executive Committee for its consideration.

(6) *Discovery*

The Committee has also carefully reviewed the Federal Rules of Civil Procedure as they relate to Discovery. It is our unanimous view that these rules have no applicability to matters before the FCC and, accordingly, should not be adopted for this type of practice.

(7) *Program Tests*

Section 1.316 of the Rules and Regulations now provides that program tests shall be permitted for a period not to exceed 30 days. Since, in most instances, the Engineering Department is unable to consider the application for license during this 30-day period, it frequently becomes necessary to request several extensions which are automatically granted.

In order to eliminate this superfluous paper work, it is recommended that program test authorizations be given for an indefinite period subject to cancellation by the Commission upon 10 days' notice.

(8) *Appointment of Examiners*

The Civil Service Commission issued proposed rules governing the appointment of examiners, and prescribing qualifications for this position. The Committee considered these rules and filed its comments with the Civil Service Commission, a copy of which is attached as Attachment 2.

At an early date, the Committee will formulate its recommendations regarding practice before Examiners so that the hearing procedure will be uniform with respect to the admissibility of evidence, the scope of the examination, and general conduct of hearings.

Respectfully submitted

LEONARD H. MARKS
Chairman
Committee on Practice and Procedure

Members:

Philip Bergson
Omar Crook
Robert Irwin
David Tolman
Vincent Welch

The action of the Executive Committee on the above recommendations was as follows:

Recommendation (1).

Disapproved.

Recommendation (2).

Approved in principle, the Committee on Practice and Procedure to implement its recommendation with specific language for later approval.

Recommendation (3).

Approved, except that a written opposition should be filed and served at least one week before motions hearing, and that the Commission should fix a date certain for such hearing.

Recommendation (4).

The Committee was asked to submit a proposed revision of the Rules designed to encourage the extension of the pre-hearing practice, but not to make such pre-hearings mandatory.

Recommendation (5).

To be decided by parties to specific proceedings.

Recommendation (6).

Approved.

Recommendation (7).

Approved.

Recommendation (8).

Not to be pursued further.